

Congress of the United States
Washington, DC 20515

September 5, 2013

Mr. Douglas W. Elmendorf
Director
Congressional Budget Office
Ford Office Building, 4th Floor
Second and D Streets, SW
Washington, DC 20515-6925

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
1625 Longworth House Office Building
Washington, DC 20515-6925

Dear Mr. Elmendorf and Mr. Barthold:

We request information regarding the projected increase in subsidy spending should premium tax credits also be made available to individuals enrolled in multiemployer health plans. It is critical that Congress understand the potential ramifications on the federal budget of a possible new regulatory decree by the administration that would allow millions of union members to receive taxpayer subsidies that are not available to other Americans who already have employer provided health insurance.

We are concerned that the administration is preparing yet another surprise announcement that would deem certain multiemployer union plans as exchange health plans. This would clearly contradict the intent of the law which denies taxpayer provided premium tax credits to individuals who are eligible for qualified employer sponsored coverage.

The statutory language of the *Patient Protection and Affordable Care Act (PPACA)* clearly prohibits such a decision. First, individuals who are eligible for “minimum essential coverage” are not eligible for premium tax credits (*PPACA* sec. 1401(a), 26 U.S.C. sec. 36B (c)(1)). This is a clear firewall in the statute intended to limit the number of individuals eligible for premium tax credits. According to the attached memo provided to the House Education and the Workforce Committee by the Congressional Research Service (CRS), “multiemployer health plans are considered generally to be employee benefit plans subject to regulation under the Employee Retirement Income Security Act.” Therefore, CRS continues, “it seems unlikely that an individual who is enrolled in a multiemployer health plan would be eligible for a premium tax credit.”

Equally important, an individual can only receive a premium tax credit if he or she purchases a qualified health plan (QHP) in an exchange. Multiemployer plans can not be offered in an exchange and clearly do not meet the definition of a QHP under section 1301(a) of PPACA. For example, a QHP must offer insurance on a guaranteed issue basis, meaning that the QHP is required to provide coverage to any individual who applies. However, multiemployer plans are restricted only to their union membership and their dependents. As currently structured, multiemployer plans do not act as health insurers, nor do they provide coverage to individuals outside of the multiemployer plan membership.

However, the administration has established a disturbing pattern in its implementation of PPACA. For over three years, the administration has ignored the letter of the law and stretched or exceeded the limits of its regulatory authority in order to meet its own political objectives. The administration has issued rules, delays, and exemptions without explaining the significant costs of these decisions to Congress or taxpayers. A recent example includes the administration's unilateral decision to delay the employer mandate, which the Congressional Budget Office (CBO) subsequently concluded adds \$12 billion to the federal deficit for 2014.

It appears that the administration is again planning to ignore the plain language of the statute and provide another special exemption from the law to a powerful special interest group. On August 27, 2013, the publication *Inside Health Policy* reported:

“The Obama administration is working on regulations to address criticisms raised by unions about the health reform law, sources say, chief among them that multi-employer or “Taft-Hartley” plans have not been designated as qualified health plans so workers enrolled in them wouldn't be eligible for ACA exchange subsidies . . . Democratic aides and sources off Capitol Hill say conversations about unions' concerns are ongoing, and they say the administration is working on regulations to address the issue.”

Underscoring the concerns raised by the *Inside Health Policy* story, the Treasury Department and Internal Revenue Service released a regulation on August 26, 2013, relating to compliance with the individual mandate. The Treasury Department rule stated, “[t]he final regulations are revised to provide that a plan offered by an employer to an employee includes a plan offered to an employee on behalf of an employer. **No inference is intended from this treatment that the third party is the employer for this or any other provision of the Code or related laws** [emphasis added].” Employee benefits experts are concerned this regulation signals that, if the administration declares they will treat multiemployer plans as QHPs, some employees will be eligible for premium tax credits, despite participation in a multiemployer plan.

According to the Department of Labor there are over 1,800 multiemployer plans that cover some 6.2 million individuals. While not all of these individuals would be eligible for premium tax credits due to income thresholds, potentially millions would qualify. Therefore, the implications for American taxpayers are significant.

We understand it is difficult for CBO and the Joint Committee on Taxation (JCT) to estimate the cost of a regulation until the specifics are released. But given the clear indications that the administration is actively considering yet another major exemption, Congress and the American people need information. We ask that you respond to the following requests by September 19, 2013:

1. Please confirm that the current CBO/JCT estimates on the cost of the premium tax credits do not assume that employees of multiemployer plans would be eligible for the tax credits?
2. Did CBO/JCT prepare any legal analysis of whether these individuals would be eligible for premium tax credits? If yes, please provide the analysis.
3. If employees of multiemployer plans are declared eligible for premium tax credits, how many additional individuals will be eligible for tax credits than is estimated by current CBO/JCT coverage estimates?
4. Please provide an updated estimate of the cost of the premium tax credits should the administration decide that employees of multiemployer plans are eligible for these tax credits.

Sincerely,



JOHN KLINE
Chairman
Education and Workforce Committee



DAVE CAMP
Chairman
Ways and Means Committee